

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35915

STATE OF IDAHO,)	2009 Unpublished Opinion No. 588
)	
Plaintiff-Respondent,)	Filed: August 26, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
HILMAN T. PETE, JR.,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gordon W. Petrie, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Hilman T. Pete, Jr. pled guilty to incest. Idaho Code § 18-6602. The district court sentenced Pete to unified sentence of thirty years with seven years determinate. Pete filed an Idaho Criminal Rule 35 motion, which the district court denied. Pete filed a second pro se Rule 35 motion which the district court treated as a request for reconsideration of the denial of his prior Rule 35 motion. The district court denied the second motion. Pete appeals from the district court's order denying his second Rule 35 motion. Pete acknowledges that no new evidence was submitted in support of the second motion but asserts that his sentence was excessive as originally imposed.

Pete's second Rule 35 motion, treated as a motion for reconsideration, was properly denied because nothing in the criminal rules authorizes a motion to reconsider the denial of a

Rule 35 motion. In fact, Pete's second Rule 35 motion was a successive motion prohibited by Rule 35. The district court did not have jurisdiction to hear Pete's second motion. *State v. Bottens*, 137 Idaho 730, 732, 52 P.3d 875, 877 (Ct. App. 2002). Further, we may not review the district court's denial of Pete's original Rule 35 motion because the notice of appeal was not timely filed from that order. See Idaho Appellate Rule 14(a) (notice of appeal must be filed within forty-two days of the challenged judgment or order). Accordingly, the district court's order denying Pete's second Rule 35 motion is affirmed.